United Nations A/HRC/26/25/Add.4

General Assembly

Distr.: General
6 May 2014

Original: English

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Addendum

Visit to the United States of America* **

Summary

The present report, submitted pursuant to Human Rights Council resolution 17/4, contains the findings of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the United States of America from 22 April to 1 May 2013.

The visit focused on implementation by the federal Government of the Guiding Principles on Business and Human Rights; issues relating to respect for internationally recognised labour standards; issues relating to indigenous peoples in the context of business activities; and on challenges, gaps, opportunities and good practice in implementing the Guiding Principles for businesses operating in particular contexts and in particular sectors, such as the extractive, finance and information and communications technology sectors.

* Late submission.

** The summary of the present report is being circulated in all official languages. The report itself, contained in the annex to the summary, is being circulated in the language of submission only.

GE.14-02476

1402476

Please recycle

Annex

[English only]

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the United States of America (22 April–1 May 2013)

Contents

		Paragraphs	*Page*
I.	Introduction	1–6	4
II.	Context	7–11	5
III.	Government regulatory and policy approach	12–36	6
	A. Achieving policy coherence	16–18	7
	B. Transparency and reporting	19–22	7
	C. Human rights risks in conflict-affected areas	23–28	8
	D. The State-business nexus	29–32	9
	E. Advancing the Guiding Principles on Business and Human Rights through other policy frameworks	33	10
	F. The role of Congress	34–36	10
IV.	Labour	37–57	11
	A. International labour standards and the United States	37–39	11
	B. Unfair practices and low-wage labour issues	40–46	11
	C. Anti-trafficking initiatives	47–49	12
	D. Initiatives against child labour	50–52	13
	E. Labour rights in supply chains	53–57	14
V.	Access to remedy	58–64	16
VI.	Issues in specific contexts	65–82	17
	A. Coal mining in West Virginia	65–72	17
	B. City government	73–76	18
	C. Business impacts and Native Americans	77–80	19
VII.	Issues specific to particular sectors	81–93	20
	A. The financial sector	81–84	20
	B. The impact of the financial crisis	85–88	21
	C. Information and communications technology	89–93	22

VIII. Conclusions and recommendations 94–103 23
A. Conclusions 94–101 23
B. Recommendations 102–103 24

I. Introduction

1. Pursuant to resolution 17/4, The Working Group on the issue of human rights and transnational corporations and other business enterprises is mandated by the Human Rights Council to conduct country visits. At the invitation of the Government, it conducted an official visit to the United States of America from 22 April to 1 May 2013.

2. Taking account of the size and complexity of the political and legal landscape of the United States, the Working Group selected certain policy themes and sectors to be the focus of the visit:

(a) Implementation by the federal Government of the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (the Guiding Principles), including legal and policy measures to ensure business respect for human rights and access to effective remedy;

(b) Issues relating to respect for internationally recognized labour standards, including in the context of low-wage and migrant workers in the agricultural supply chain and in the services sector;

(c) Issues relating to indigenous peoples in the context of business activities;

(d) Challenges, gaps, opportunities and good practices in implementing the Guiding Principles for businesses operating in particular contexts and in particular sectors such as the extractive, finance and information and communications technology (ICT) sectors.

3. The 10-day visit was carried out by the following members of the Working Group: Michael K. Addo and Puvan Selvanathan. Meetings were held in Washington D.C., Arizona, California, Florida, New York and West Virginia. The Working Group thanks the Government of the United States for the invitation to visit and for facilitating and coordinating activities throughout. It also thanks to all the organizations, individuals and groups that contributed variously to the success of the visit.

4. The Working Group met officials from the Department of State, the Department of Labor, the Department of Justice, the Department of Agriculture, the Department of the Interior, the Department of Commerce, the Equal Employment Opportunity Commission, the United States Agency for International Development, the Department of the Treasury, the Overseas Private Investment Corporation, the Export-Import Bank of the United States (Ex-Im Bank) and the Office of Management and Budget.[1] The Working Group also met officials of the Tom Lantos Human Rights Commission of the United States Congress and of the Senate Committee on Foreign Relations.

5. The Working Group also met representatives of civil society, including trade unions, employer organizations and professional organizations, and a wide range of civil society groups and academic institutions throughout the visit. In addition, two consultations were organized by non-governmental organizations (NGOs) and one with a wide range of companies was organized by the United Nations Global Compact Office and BSR. Meetings were also held with companies in the banking sector, the information and communications technology sector and with socially responsible investors.

[1] In addition, the Working Group received written information from the Environmental Protection Agency and the Securities and Exchange Commission.

6. In San Francisco, the Working Group met officials from the city and county Governments of San Francisco. In Los Angeles, the Working Group met labour rights experts and workers in the carwash and hotel industries. In Flagstaff, the Working Group met Native American representatives at a meeting hosted by the Navajo Nation Human Rights Commission. In Immokalee, the Working Group met civil society representatives and companies growing and buying tomatoes through the Fair Food Program and visited tomato farms to meet workers and managers. In Charleston, the Working Group met officials from the West Virginia Environmental Protection Agency, representatives of industry organizations and NGOs and residents of Lindytown.

II. Context

7. The United States is a federal State with a multilayered, multifaceted legal and political system governing a business community with local and global influence and operations. Regulations in key areas, such as environmental and labour law, involve both federal and state institutions in their implementation, making efforts to implement the Guiding Principles complex. The country scores comparatively well in international rankings relating to rule of law[2] and absence of corruption.[3]

8. The United States is party to three core international human rights treaties[4] and has signed but not ratified a further four treaties.[5] It was reviewed at the ninth session of the Working Group on the Universal Periodic Review in 2010. It has ratified two of the eight fundamental conventions of the International Labour Organization.[6] In 2011, it co-sponsored resolution 17/4, by which the Human Rights Council endorsed the Guiding Principles.

9. The Working Group was encouraged by the support of the United States Council for International Business for the Guiding Principles and welcomes the fact that some United States multinational enterprises recognize the value of embarking on a process for implementation of the Principles. However, it was also evident that large segments of the United States business community appear to have limited awareness or understanding of internationally recognized human rights and of the standards and processes contained in the Guiding Principles. Lack of awareness of the Principles may be explained by the fact they were only endorsed in 2011, however the Working Group encountered suspicion, and even outright rejection, of important elements of the human rights framework on the part of some business groups, particularly in relation to labour rights.

---

[2] See for example http://worldjusticeproject.org/country/united-states.

[3] See for example http://cpi.transparency.org/cpi2013/results/ and www.transparency.org/country#USA.

[4] The International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The United States has ratified the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, although it is not a party to the Convention, which it has signed but not ratified.

[5] The International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

[6] Conventions No. 105 (1957) concerning the Abolition of Forced Labour and No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

10. Civil society in the United States is vibrant, with NGOs, trade unions, multi-stakeholder initiatives and professional associations, such as the American Bar Association, working proactively on issues relating to business impacts on human rights, both within the United States and in relation to United States companies operating abroad. Many organizations provided information to the Working Group during the visit.[7]

11. The views of various stakeholders, including the Government, often diverge on issues of business and human rights, particularly those concerning labour. Multi-stakeholder initiatives provide space for social dialogue upon specific themes and within sectors to discuss business and human rights issues.[8]

III. Government regulatory and policy approach

12. In April 2013, the Government of the United States published a policy document entitled "U.S Government Approach on Business and Human Rights".[9] That document and the ongoing actions of the Government in support of the Guiding Principles demonstrate the commitment of the Government to the Principles, an official position evidenced throughout the visit.

13. The document suggests that the primary focus of the Government is the external implications of United States corporate activities and support for business diplomacy in promoting foreign policy objectives, including the respect for labour and human rights; partnering with business to undertake projects of mutual interest; and also the promotion of the rule of law and respect for human rights through multilateral and bilateral collaboration. The Working Group notes the value of some of the initiatives highlighted in the policy and their correspondence with some of the objectives of the Guiding Principles.

14. The Working Group supports and commends the Government of the United States for taking important regulatory and policy initiatives aimed at preventing potentially adverse impacts of United States companies when they operate abroad.

15. However, the Working Group notes that the scope of the document on the approach of the Government to business and human rights remains limited. It seems that the Government needs to undertake a rigorous and comprehensive review of the current legal and policy environment for businesses, to ensure that they are capable of meeting the expectations of the Guiding Principles at home and abroad, for example in the area of labour laws and access to effective remedy.

---

[7] See, amongst other examples, the International Corporate Accountability Roundtable, "Compendium for U.S. civil society consultation of the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises" (April 2013), available from http://issuu.com/_icar_/docs/compendium_-_unwg_us_civil_society_consultation_-_/3?e=6698884/2155849. See also Business and Human Rights Resource Centre, submission to the Working Group, available from www.business-humanrights.org/media/documents/un-working-group/business-human-rights-resource-centre-submission-to-un-working-group-us-country-visit-apr-2013.pdf.

[8] For a critical assessment of multi-stakeholder initiatives which was presented to the Working Group, see www.msi-integrity.org/?page_id=1480.

[9] Available from www.humanrights.gov/2013/05/01/u-s-government-approach-on-business-and-human-rights/.

A. Achieving policy coherence

16. Policy coherence is a key element of pillar 1 of the Guiding Principles, which states that the State should ensure that the various government departments and agencies "that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates".[10]

17. During extensive briefings by a broad range of federal government agencies, the Working Group received information about multiple regulatory and policy initiatives by different federal and other authorities aimed at protecting persons from the potential or actual human rights impacts of business enterprises.

18. While fully acknowledging the challenges of pursuing a more comprehensive approach to implementation of the Guiding Principles across many different government entities, the Working Group considers it imperative for the Government of the United States to undertake an assessment of the current state of overall policy coherence and coordination between Government entities,[11] the effectiveness of the measures undertaken, identification of good practices and gaps[12] and challenges in the protection of rights and access to remedy. Such an analysis could contribute to a wider national action plan to implement the Guiding Principles.[13]

B. Transparency and reporting

19. The Guiding Principles emphasize the importance of communication by businesses as to how they address their human rights impacts, particularly where the nature of their business operations or operating contexts pose a significant risk to human rights.[14]

20. The Government of the United States has developed a series of legal and policy measures to increase transparency and reporting by companies in relation to their potential and actual human rights impacts through initiatives such as the responsible investment reporting requirements for investments in Burma, which reference the Guiding Principles, and section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act for companies in the oil, natural gas or minerals sectors, which requires them to disclose the type and amount of payments made to foreign Governments in connection with the development of those natural resources. The Government has also given its support and committed to implementing the Extractive Industries Transparency Initiative, a multi-stakeholder initiative to promote revenue transparency and accountability in the extractive sector including by maintaining the EITI standard.

21. The Working Group welcomes the efforts of the United States to increase transparency with regard to due diligence on human rights and payments to Governments by companies, although civil society organizations have raised concerns that a focus on

---

[10] A/HRC/17/31, annex, guiding principle 8.

[11] Such an assessment could form part of a baseline study on the effective implementation of the Guiding Principles by the United States.

[12] Some of those gaps are explored in subsequent sections of the report but that is not an exhaustive list, hence the need for a comprehensive analysis.

[13] See A/HRC/23/32, para. 71. See also http://accountabilityroundtable.org/wp-content/uploads/2013/07/ICAR-Coalition-Letter-to-United States-Government-UNGPs-BHR-Implementation.pdf and www.business-humanrights.org/UNGuidingPrinciplesPortal/ToolsHub/Governments/TypeInitiative/natlactionplans.

[14] A/HRC/17/31, annex, guiding principle 3 (d) and commentary.

reporting with no consequences for those that do not report could have a limited impact in terms of preventing human rights abuse.

22. The Working Group recommends that the Government ensure that reports submitted under transparency and reporting schemes include information as to how the submitting companies have addressed human rights risks. For legitimacy and effectiveness, it also recommends meaningful consequences for companies who do not fulfil reporting obligations.

C. Human rights risks in conflict-affected areas

23. The Guiding Principles offer guidance to States on how to ensure that business enterprises operating in conflict-affected areas are not involved in human rights abuses.[15]

24. The Working Group noted the attention paid by the Government and stakeholders to section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act on conflict minerals. That provision requires companies to determine whether conflict minerals used in their products are sourced from the Democratic Republic of the Congo or adjoining countries and if so, requires companies to conduct due diligence measures to determine whether the minerals financed or benefited armed groups before they can describe their products as "DRC conflict free." The aim is to avoid financing armed groups from the proceeds of minerals extraction.

25. The Working Group welcomes the efforts to avoid corporate involvement in human rights abuses linked to conflict and recognizes that due diligence requirements, such as that contained in section 1502, can play an important role in preventing trade in minerals from fuelling conflict and gross human rights abuses. The Working Group notes concerns from some business enterprises that carrying out such due diligence will be onerous, but stresses that greater transparency and accountability in the sourcing of minerals that may be linked to human rights violations and abuses can be important in limiting the revenue streams of the violators and abusers.

26. The Working Group received information about the support of the Government for the Public-Private Alliance for Responsible Minerals Trade, a public-private partnership that complements section 1502. The Working Group would welcome further information about the implementation of this initiative.

27. The Working Group also received information that several United States companies using minerals have signed up to the Conflict-Free Smelter Program, an audit which assists companies to identify smelters or refiners that can demonstrate that the materials they process are from conflict-free sources.

28. The issue of private security providers came up frequently in discussions concerning conflict. The Government of the United States is a participant in the initiative on Voluntary Principles on Security and Human Rights, which aims to guide extractive companies in conducting risk assessments and engagement with public and private security providers in a way that respects human rights. The Working Group notes efforts by the United States to increase accountability with respect to implementation of the Voluntary Principles, enhance their implementation on the ground and increase transparency within the initiative, reflecting concerns that have been raised by civil society. The Government has also supported the development of the International Code of Conduct (ICoC) for Private Security Service Providers and is a founding member of the ICoC Association, a multi-

[15] Ibid., guiding principle 7.

stakeholder independent governance and oversight mechanism that aims to certify and monitor private security providers and provide a complaints procedure. The Working Group welcomes the support of the Government for the code of conduct and the fact that the Department of State has stated its intention of requiring membership in the Association for entities wishing to bid for government contracts.

D. The State-business nexus

29. The Government of the United States provides financing support for companies, including through the Overseas Private Investment Corporation and Ex-Im Bank. The Working Group notes that the Corporation's environmental and social policy statement draws on the performance standards on social and environmental sustainability of the International Finance Corporation (IFC). Additionally, the Corporation's Office of Accountability can receive complaints in relation to the environmental or social impacts of projects supported by it. The Working Group also notes that since 2010 the Corporation requires projects to establish grievance mechanisms for workers and affected communities.

30. The Working Group welcomes such steps to ensure that the United States promotes and requires respect for human rights when supporting or conducting commercial transactions with business enterprises. The Working Group also welcomes the incorporation of the IFC performance standards, reflecting important elements of the Guiding Principles.

31. However, the Working Group heard allegations that the procedures of the Corporation's Office of Accountability and their implementation might not be fully consistent with the criteria for an effective grievance mechanism under guiding principle 31 and recommends that a review be undertaken to address any inconsistencies.

32. The Working Group notes and welcomes the recent adoption by Ex-Im Bank of policies relating to the impact of financed operations,[16] including the adoption of the IFC performance standards, the Equator Principles and the stated alignment with the Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence of the Organization for Economic Cooperation and Development (OECD),[17] which references the Guiding Principles. The Working Group notes concerns raised by civil society about the ability of impacted communities to hold Ex-Im Bank accountable for adherence to these standards.[18]

E. Advancing the Guiding Principles on Business and Human Rights through other policy frameworks

33. As part of its activities within OECD, the Working Group considers that the national contact point for the OECD Guidelines for Multinational Enterprises has the potential to play an important role, including in mediating specific instances, but is concerned about the limited resources available to the contact point to fulfil its important functions. The Working Group also notes the concerns expressed by some civil society organizations and

[16] See http://www.exim.gov/generalbankpolicies/environment/Environmental-and-Social-Due-Diligence-Procedures-and-Guidelines.cfm.

[17] OECD, TAD/ECG(2012)5, available from http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/ecg(2012)5&doclanguage=en.

[18] See International Corporate Accountability Roundtable compendium, p. 6.

their recommendations to strengthen the specific instance process further,[19] and encourages the United States to consider those recommendations, including the incorporation of best practices from the specific instances procedures of other OECD national contact points, including as regards transparency and making findings of fact.

F. The role of Congress

34. The United States Congress has long addressed issues of the impact of business on human rights, including in recent years, through the 1977 Foreign Corrupt Practices Act and the Dodd-Frank Act. Congress and the Senate can play an important role in raising awareness of the Guiding Principles and in promoting policy coherence regarding different initiatives related to business impacts on human rights, both within the United States and by companies domiciled in the United States operating abroad.

35. The Working Group encourages both chambers to increase awareness of the Guiding Principles among lawmakers and to consider what further legislative action may be required to address remaining gaps and challenges in their implementation.

36. As a first step, the Working Group considers that the Tom Lantos Human Rights Commission would be well placed to hold a hearing on the Guiding Principles. This might focus on how the Government could further integrate the Principles into the activities of its various agencies, particularly the Office of the United States Trade Representative, the Department of Commerce, and the Department of the Treasury.

IV. Labour

A. International labour standards and the United States

37. The Guiding Principles stipulate that States have a duty to protect against human rights abuses by business and companies have a responsibility to respect human rights as expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work.[20]

38. Whilst the United States has not ratified all core ILO conventions, it is a member of ILO and has an obligation to respect, promote and realize the principles concerning the fundamental rights enshrined in the Declaration and its follow-up concerning freedom of association and effective recognition of the right to bargain collectively; prohibition of forced labour and child labour; and non-discrimination in employment. The Government of the United States has committed to protecting and respecting those rights and has detailed constitutional provisions, laws and policies that protect labour rights in its annual reports to ILO.

39. Nevertheless, ILO bodies have raised some concerns with regards to gaps between existing United States laws and practices and the rights enshrined in the Declaration and fundamental conventions, as well as other conventions ratified by the United States.

[19] Ibid., pp 1–7.

[20] Guiding principles 1 and 12.

B. Unfair practices and low-wage labour issues

40. During the visit, the Working Group encountered allegations of unfair labour practices relating to the exercise of freedom of association and other core labour rights, previously raised with the ILO Committee on Freedom of Association.[21]

41. The Working Group notes with concern that public sector employees at the state and federal levels, agricultural workers and domestic workers are excluded from the protection offered by the National Labor Relations Act and that the protection provided by other federal and state legislation is more limited and often does not include the right to form a trade union and to bargain collectively.

42. Other allegations presented to the Working Group included the use of permanent replacements for workers exercising their legal right to strike; the denial of access to the workplace for union representatives; the denial for public workers and supervisors of the right to form trade unions and bargain collectively (outside the narrow exceptions allowed for by the right to freedom of association); the widespread denial in practice of adequate protection and remedies for undocumented immigrant workers, who risk intimidation and dismissal for seeking to join a trade union.

43. The Working Group also received allegations of abusive labour practices in low-wage industries with a high presence of migrant workers, many undocumented, such as the carwash and hotel industries and the agricultural sector, which would be illegal under United States laws and violate international labour standards.[22] They included paying workers less than the statutory minimum wage, non-payment of wages and chronic disregard for minimum health and safety measures, including rest breaks or providing workers with safety equipment, leading to accidents and injuries for workers.

44. In this regard, the Working Group welcomes recent efforts by the Departments of Labor and Justice to ensure that migrant workers are aware of their labour rights and that these are effectively protected. This complements the work of the Equal Employment Opportunity Commission, which is charged with enforcing non-discrimination statutes and receiving complaints of alleged discrimination in the private or public sector, as well as providing guidance to employers and employees. The Working Group was also informed of some new and innovative initiatives by the Government, trade unions and employers to address some of these concerns, some undertaken jointly, and would welcome further information on their implementation.[23]

45. The overall sense from the visit was that the scale of current initiatives was insufficient, including in terms of allocated resources, to effectively address the widespread nature of violations in low-wage sectors, particularly sectors with a significant presence of undocumented migrant workers. Furthermore, the information received indicates that in low-wage sectors, the legal and regulatory framework may generally present insufficient

---

[21] See recommendations of the Committee in cases 1523, 1543, 1557, 2227, 2292, 2460, 2524 and 2741 at www.ilo.org/dyn/normlex/en/f?p=1000:20060:0::NO:20060.

[22] See, for example, Carwash Workers Organizing Committee of the United Steelworkers, "Cleaning up the carwash industry: empowering workers and protecting communities" (2008), available from http://cleancarwashla.org/wp-admin/images/CleaningUpReport.pdf and National Workers' Rights Board, "Raising standards for carwash workers" (2010), available from http://laborweb.aflcio.org/sites/preview/index.cfm?action=downloadasset&assetid=33a2df89-c679-449f-9814-edc57dd52329.

[23] One example is the Maintenance Cooperation Trust Fund in California, which collaborates with Government, business and workers' organizations to investigate and denounce illegal labour practices in the janitorial industry and encourage and promote accountability and responsible business practice.

deterrents to illegal behaviour, too many loopholes for employers wishing to avoid compliance and insufficient incentives for companies to behave responsibly with subcontractors or in a supply chain.

46. The situation is compounded by the apparent disregard, by at least some of the companies in the low-wage sectors, of the corporate responsibility to respect human rights that applies to all industry sectors, irrespective of whether the State is meetings its own duty to protect through effective policies and regulations.

C. Anti-trafficking initiatives

47. The Working Group was informed about a range of efforts undertaken by the United States to combat and address human trafficking, both within and outside the country, through legislation[24] and coordinated action through the President's Interagency Task Force to Monitor and Combat Trafficking.

48. In particular, the Working Group was encouraged by Executive Order 13627 of September 2012 on strengthening protections against trafficking in persons in federal contracts, which establishes specific requirements for federal contractors and subcontractors to prevent trafficking in persons in government contracts. The Working Group notes the considerable efforts that will now be required to implement it, including through raising awareness and building the capacity of contractors to comply with the new regulation, as well as ensuring its enforcement.

49. At the same time, the Working Group received reports that despite those efforts, human trafficking occurs within the United States, including some allegations of trafficking within guest worker programmes. The Working Group encourages the United States to continue and expand its efforts in this area, in collaboration with business and civil society organizations, and to share its experience of coordinated action with other countries.

D. Initiatives against child labour

50. The United States has ratified ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour[25] and child labour in the United States is regulated by several federal[26] and state statutes. During the country visit, the Working Group was informed of initiatives by the Departments of Labor and Agriculture to reduce child labour in the United States and abroad. These included developing and funding programmes to support foreign Governments and companies in tackling child labour, including assisting them to carry out risk assessments and due diligence on labour rights in their supply chain.[27] The Department of Labor has also produced a toolkit for business to ensure that a company's goods and the

[24] The key statute is the Victims of Trafficking and Violence Protection Act. The United States has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

[25] It has not, however, ratified the Convention on the Rights of the Child, nor the ILO Minimum Age Convention, 1973 (No. 138) concerning Minimum Age for Admission to Employment.

[26] Inter alia, the Fair Labor Standards Act, the Occupational Safety and Health Act, the Victims of Trafficking and Violence Protection Act, executive order 13126 on the Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, the 2008 Farm Bill, and other statutes and provisions of the constitution.

[27] Department of Labor, "List of goods produced by child labor or forced labor", available from www.dol.gov/ilab/reports/child-labor/list-of-goods/.

raw materials that it uses are not made by child labour or forced labour.[28] Similarly, in 2012, it published a set of voluntary recommendations for agricultural companies to combat child and forced labour in their supply chains,[29] although to date the extent of their uptake by industry remains unclear.

51. The Working Group welcomes these and other efforts to provide guidance and support to companies and their partners on how to ensure respect for the rights of children. However, the Working Group notes that significant concerns remain with regard to hazardous and dangerous conditions of work for children aged less than 18 and even 16 in the agricultural sector. The Working Group received information indicating that accident and death rates among children employed in the agricultural sector far exceeded similar rates for children employed in other sectors, further noting that children are permitted in agriculture to carry out certain hazardous activities that are prohibited in other sectors and that they are excluded from federal protection with regard to the minimum age and hours of work limitations.[30]

52. The Working Group also received information on violations of the limited protection available to children and information that negative impacts on the rights of children disproportionately affected the children of migrants. The Working Group notes prior concerns expressed with regard to child labour in the United States agricultural sector by ILO[31] and the Committee on the Rights of the Child (CRC/C/OPSC/USA/CO/2 paras. 25 and 26), and recommends that the Government and companies in the agricultural sector address such concerns as a matter of priority so as to ensure that the rights of children are effectively protected in the context of agricultural business activities.

E. Labour rights in supply chains

53. The Government of the United States and United States companies participate in several voluntary multi-stakeholder initiatives that address labour rights. The United States is a partner of the joint ILO and IFC Better Work programme, which aims to improve effective protection of labour rights and access to remedy for garment sector workers, in alignment with the ILO core labour standards that underpin the Guiding Principles. The Working Group notes that some stakeholders have suggested that the Better Work programme should be further strengthened, in particular with regard to access to remedy for

---

[28] Department of Labor, "Reducing child labor and forced labor – a toolkit for responsible business", available from www.dol.gov/ilab/child-forced-labor/index.htm.

[29] See the report of the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products, December 2010, available from www.dol.gov/ilab/issues/child-labor/consultativegroup/report2010b.pdf.

[30] Human Rights Watch, "Fields of peril: child labor in United States agriculture", May 2010, available from www.hrw.org/reports/2010/05/05/fields-peril-0.

[31] ILO Conference Committee on the Application of Standards, observation in relation to ILO Convention No. 182, adopted in 2006, available from www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2556205,102871,United%20States, 2006, and Committee of Experts on the Application of Conventions and Recommendations, observation in relation to ILO Convention No. 182, adopted in 2012, available from www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3057769,102871,United%20States,2012.

workers in cases of violations of labour rights, ensuring effective exercise of freedom of association and strengthening monitoring and transparency.[52]

54. The Working Group met with and noted the work and activities of the Fair Labor Association. The Working Group notes allegations by some stakeholders of weaknesses in the procedures of the Association and its effectiveness in detecting violations of labour rights, particularly the right to freedom of association, and of the lack of a grievance mechanism to allow workers effective access to remedy when its policies are not observed.[53] In this regard, the Working Group welcomes the initiative by the Association to review the implications of the Guiding Principles for its work.[54]

55. As an example of a new, innovative initiative to address labour rights issues in a supply chain within the United States, the Working Group was impressed with efforts to strengthen the protection of workers in the tomato-growing sector through the Fair Food Program, which is a groundbreaking model for promoting labour rights based on a partnership between farmworkers, Florida tomato growers and participating buyers. Under the programme, the Coalition of Immokalee Workers conducts worker education sessions, held "on the farm" and "on the clock", on the labour rights set forth in the Fair Food code of conduct, which requires compliance with all applicable laws and provides for labour rights which go beyond existing legal requirements.

56. The Fair Food Standards Council is a third-party monitor created to ensure compliance with the Fair Food Program, which conducts regular audits and carries out investigations into complaints and their resolution. The Fair Food agreements – between the Coalition and retailers, and the Coalition and growers – are legally enforceable by the Coalition.

57. While the Working Group reiterates that the ultimate responsibility remains with the Government to ensure that rights, including labour rights, are protected and that there is access to effective remedy for any adverse impacts, in the absence or failure of those State mechanisms, the Fair Food Program provides a model of a market-based approach to the protection of human rights in corporate supply chains that ensures a substantive role for the rights holders themselves in the monitoring and enforcement of their own rights.

V. Access to remedy

58. The third pillar of the Guiding Principles concerns access to remedy. The Working Group notes the limited references to access to remedy in the document on the Government approach to business and human rights referred to in paragraph 12 above, suggesting – perhaps mistakenly – that insufficient priority is attached to the third pillar.

59. The most common method of seeking redress for those whose rights may have been impacted by business activities is through civil law suits grounded in tort law, property law, or specific legislation at the state or federal level. Such legislation may often empower

[52] Clean Clothes Campaign and Community Legal Education Centre, "10 years of the better factories Cambodia project", August 2012, available from www.cleanclothes.org/resources/publications/ccc-clec-betterfactories-29-8.pdf.

[53] American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) "Responsibility outsourced: social audits, workplace certification and twenty years of failure to protect worker rights", April 2013, available from www.aflcio.org/content/download/77061/1902391/CSReport.pdf.

[54] Shift, "Implications of the UN Guiding Principles on Business and Human Rights for the Fair Labor Association", New York, 2012, available from www.fairlabor.org/report/implications-un-guiding-principles-business-and-human-rights-fair-labor-association.

different executive or administrative agencies to provide remedies for violations and abuses of human rights.[35]

60. There is no single federal ombudsperson in the United States. However, several federal agencies, including the Internal Revenue Service, Department of Homeland Security, Department of Education, Environmental Protection Agency and the Food and Drug Administration all house ombudspersons addressing specific issues and often acting as the link between private citizens and corporations.

61. The document on the Government approach to business and human rights refers to the national contact point for the OECD Guidelines for Multinational Enterprises and states that it offers a recourse mechanism and forum for confidential discussion between business and stakeholders on issues related to the Guidelines.[36] The Working Group nevertheless received allegations that the national contact point falls short of its purpose of providing an effective way of resolving specific issues. In particular, the Working Group notes calls from civil society organizations that the national contact point should be empowered to make findings of fact and draw conclusions as to whether the OECD Guidelines have been breached, as is the case for some other national contact points.[37] The Working Group supports this call.

62. Civil society organizations stressed the need to strengthen access to remedies for human rights abuses linked to United States business activities, both within and outside the country.[38] The Working Group received information about legal and practical barriers to access to remedy and heard complaints that the United States has not ensured that victims have access to judicial remedies for human rights abuses that have arisen extraterritorially owing to the activities of United States businesses or their subsidiaries.

63. Much of the debate over judicial remedies in the United States has focused on the Alien Tort Statute.[39] The visit of the Working Group took place just a few days after the United States Supreme Court had issued a ruling in *Kiobel v. Royal Dutch Petroleum*,[40] which was at the heart of much of the discussion about remedy during the visit. The full consequences of that decision will emerge over time.

64. The Working Group notes that the *Kiobel* decision notwithstanding, Congress and the Government can support appropriate and effective remedy of adverse impacts created by United States-based companies abroad using relevant laws and regulations. Where there are gaps, including regulatory gaps, or legal or practical barriers that prevent legitimate cases from being brought before the courts, appropriate steps should be taken to ensure that such gaps or barriers are addressed.

---

[35] For instance, title VII of the Civil Rights Act of 1964, which prohibits employment discrimination, is enforced by the Equal Employment Opportunity Commission. The Commission investigates, mediates and may file lawsuits on behalf of employees. Other agencies have jurisdiction to investigate actions by business enterprises.

[36] Final statements from the national contact point on specific instances can be reviewed at www.state.gov/e/eb/oecd/usncp/specificinstance/assessments/index.htm.

[37] See International Corporate Accountability Roundtable compendium, p. 5.

[38] Ibid., p. 6, footnote 8.

[39] 28 United States Code § 1350.

[40] www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1491.htm. See also www.business-humanrights.org/Documents/SupremeCourtATCAReview.

VI. Issues in specific contexts

A. Coal mining in West Virginia

65. The Working Group met with representatives of the coal mining industry, the state environmental regulator, civil society organizations and representatives of communities impacted by surface mining activities in Appalachia. The objectives were to look at the actual and potential impacts on human rights arising from a business activity with a significant physical footprint and to get perspectives from industry and the regulator on strategies to minimize the impact on communities.

66. Surface mining, or "mountaintop removal mining", as those opposing the activity refer to it, is a deeply contested issue in West Virginia and beyond. The Working Group does not have a mandate to take a position for or against the practice and confines its interest as to whether actual or potential adverse human rights impacts are identified, prevented, mitigated and addressed.

67. Surface mining is regulated at both federal and state levels under the Surface Mining Control and Reclamation Act and the Clean Water Act, and the relevant West Virginia state laws respectively. The main federal regulatory agencies are the Environmental Protection Agency[41] and the Army Corps of Engineers, with the West Virginia Department of Environmental Protection as the regulatory agency at the state level. At a meeting with the Working Group, officials of the Department outlined key elements of the consultative processes carried out in granting mining permits.[42] The Working Group also received information about the functions of the environmental advocate.[43] It notes the efforts of the Department to engage with and respond to community concerns related to surface mining.

68. The Working Group was informed that some of the communities most directly impacted by surface mining were isolated and economically marginalized. According to information received from both industry sources and community representatives, many coal-mining communities are deeply divided about the significance of surface mining and its impact. Community representatives emphasized that such divisions at times resulted in threats, intimidation and harassment of those activists seen as "anti-coal".

69. In meetings with community representatives, the Working Group heard allegations of significant adverse human rights impacts arising from surface mining, most notably related to physical and mental health, including cancer and birth defects, and access to clean water. Other concerns raised included non-compliance with regulatory standards for access to information and for protection of local cemeteries, which is considered a core element of the cultural heritage by community representatives. Allegations were also made about a lack of adequate and timely consultation about planned permits.[44]

70. According to industry sources, coal companies in West Virginia recognize that there may be legitimate concerns about adverse impacts arising from surface mining activities, but are of the view that many allegations arise from a general environmental agenda against coal. Industry sources informed the Working Group of their efforts to engage with stakeholders and of their contributions to local communities, which could not take place with full transparency in case they attracted protests from those opposing surface mining.

---

[41] The Working Group was not able to meet with Agency officials during the visit.

[42] See www.dep.wv.gov/dmr/Pages/default.aspx.

[43] See www.dep.wv.gov/environmental-advocate/Pages/default.aspx.

[44] See, for example, Ohio Valley Environmental Coalition at http://ohvec.org/issues/mountaintop_removal/articles/index.html.

71. Some investors have been engaging critically on the issue of surface mining.[45] The Working Group also heard from some financial institutions about the specific due diligence processes they engage in when dealing with companies involved in surface mining,[46] although such measures have been criticized as being insufficient by some civil society groups.[47]

72. The Working Group notes with concern the serious nature of the alleged adverse impacts, including impacts on health and water quality and the intimidation of those exercising their rights to express opposition to surface mining. It urges the responsible authorities to investigate and address such impacts, including through timely and comprehensive consultations with affected communities, and through providing for effective remedy for those adversely impacted. It also recommends that coal companies ensure that they operate with respect for human rights, including by conducting due diligence on human rights in accordance with the Guiding Principles. The divisive nature of the issue and the strong opposition from some groups does not remove the responsibility to respect human rights, including through effective stakeholder engagement and establishing or participating in legitimate grievance mechanisms at the operational level. Coal companies should be able to demonstrate their efforts in this regard, even where such efforts have failed due to opposition and protest.

B. City government

73. Local county and municipal authorities also have powers to guide and regulate business conduct, including in labour-related issues.

74. The Working Group was encouraged by a number of initiatives implemented by the City of San Francisco to improve local labour conditions and establish non-discrimination requirements for businesses domiciled within the city. Those initiatives stipulated that there should be human and labour rights provisions in city procurement contracts and encouraged business to engage with local communities and support human rights initiatives in urban rejuvenation programmes.

75. However, San Francisco continues to face challenges in implementing, monitoring compliance with and enforcing some of the regulations. City officials noted that in certain instances the value of some contracts was simply too small to compel compliance from suppliers, who then chose instead to forgo doing business with the city. One strategy being attempted to overcome this was the Sweatfree Purchasing Consortium,[48] an aggregated buying scheme whereby neighbouring cities and states collectively established minimum procurement criteria. This both increased contract leverage and enhanced the capacity to monitor and enforce compliance.

76. The Working Group would encourage other counties and municipalities to consider implementing and sharing learning on such initiatives, especially on policy coherence across departments that engage with contractors and other businesses. Initiatives may

[45] See, for example, www.ceres.org/investor-network/resolutions/arch-coal-mountain-top-removal-2012 and www.endowmentethics.org/tags/blog?page=17.

[46] See, for example, www.citigroup.com/citi/citizen/finance/environment/mrcm.htm and www.ubs.com/global/en/about_ubs/corporate_responsibility/news_display_page_corporate_responsibility.html/en/2010/11/09/ubs_releases_statement_on_mountaintop_removal_coal.html.

[47] See, for example, http://ran.org/coal-finance-reportcard-2013.

[48] This brings together 3 states and 13 cities that have committed to ending public purchases from sweatshop factories and coordinates efforts and purchases on behalf of its members. http://buysweatfree.org/.

naturally extend to facilitating channels for citizens to report non-compliance and effective access to remedy for those negatively impacted by the actions of suppliers of goods and services to the city.

C. Business impacts and Native Americans

77. In 2010, the United States declared support for the United Nations Declaration on the Rights of Indigenous Peoples.[49] The Working Group draws attention to the recommendations made by the Special Rapporteur on the rights of indigenous peoples, who visited the United States in 2012, (A/HRC/21/47/Add.1) and those of the Committee on the Elimination of Racial Discrimination with respect to business impacts on indigenous peoples (CERD/C/USA/CO/6).

78. The Working Group held meetings in Washington, D.C. and Arizona with representatives of indigenous peoples, who highlighted the adverse impacts on indigenous peoples from past and present business activities, in particular the extractive industries. In submissions to the Working Group, the National Congress of American Indians, the International Indian Treaty Council, the Navajo Nation Human Rights Commission, and the San Carlos Apache Tribe noted impacts on the environment, land and water and on sites of economic, cultural and religious significance to Native Americans, leading to displacement, and adverse impacts on, inter alia, the rights of individuals to the enjoyment of the highest attainable standard of health; to an adequate standard of living, including food; to safe drinking water and sanitation; and to the right of self-determination for indigenous peoples. Native American representatives further highlighted the imperative that federal authorities consult with Native American Governments when taking decisions in relation to business activities that may impact on indigenous peoples and welcomed recent federal Government initiatives in this regard. However, they also highlighted continuing obstacles to ensuring effective protection by state authorities from present potential impacts and to accessing effective remedy for past impacts.

79. The Working Group received information from extractive companies based in the United States on initiatives they had taken to carry out due diligence in accordance with the Guiding Principles.[50] The Working Group welcomes such efforts, which should take place in close coordination and consultation with indigenous peoples.

80. The Working Group draws attention to its thematic report on addressing the adverse impacts of business-related activities on the rights of indigenous peoples through the lens of the Guiding Principles (A/68/279), in which it makes recommendations to both Governments and business enterprises that are relevant to the United States.

VII. Issues specific to particular sectors

A. The financial sector

81. The financial sector is an enabler of business activity, a gatekeeper of investment, an arbiter of economic risk and opportunity and a major business sector in itself. It has an

[49] See www.state.gov/documents/organization/184099.pdf.

[50] The commentary to the Guiding Principles states that business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, such as indigenous peoples, and that they should seek to understand the concerns of potentially affected stakeholders by consulting them directly.

important role in defining how and if businesses choose to address human rights. The Guiding Principles advise that the corporate responsibility to respect applies to financial institutions. Thus they have a responsibility to prevent and address the adverse impacts of their own activities, as well as to seek to prevent or mitigate impacts that are directly linked to their operations, products or services through their business relationships.[51] This guidance is material to financial institutions whose business relationships with clients require them to provide financial and investment advice, including opinions and assessments of financial risks and opportunities, or to handle transactions on their behalf.

82. The Working Group met with a group representing banks and, separately, with a group of investors and civil society representatives to discuss the implementation of the Guiding Principles in the financial sector. The bankers informed the Working Group of ongoing efforts and initiatives relating to policies addressing social risks, such as the recent updating of the Equator Principles referencing the Guiding Principles for large-scale project finance. However, the bankers suggested that their leverage and ability to prevent adverse impacts was limited and their ability to raise human rights as a material factor depended on how finance was regulated in different countries. They also indicated that understanding how the Guiding Principles might be applied is evolving through initiatives such as the Finance Initiative of the United Nations Environment Programme, the Thun Group of Banks, the OECD Working Party on Responsible Business Conduct and the OECD Guidelines for Multinational Enterprises.

83. The group of investors and civil society organizations informed the Working Group that some investors actively used the Guiding Principles in their engagements with asset owners and that human rights issues informed their investment decisions. They also noted that the existing narrow definition of fiduciary duty made it difficult for asset managers to include human rights within an assessment of materiality. Others commented on what they perceived as systemic risks that investors should be aware of, for example issues relating to political disclosure and tax havens. Investors emphasized that human rights were not generally considered a business issue by many United States companies and that this was reflected in their own experience of engaging with the companies they invested in. Civil society organizations called for enhanced disclosure requirements that investors could then use in assessing companies, while appreciating that disclosure of actual human rights impacts was constrained by the risk of legal liability.

84. The Working Group welcomes the efforts of socially responsible investors to promote the implementation of the Guiding Principles and in using them as benchmarks in their analysis of company performance. The Working Group encourages the investment community to evolve further the definitions of fiduciary duties and push for their adoption by regulators, to enable better consideration of the opportunities and risks arising between business and human rights.

[51] See letters from the Working Group and from OHCHR to the Chair of the OECD Working Party for Responsible Business Conduct, available from www.ohchr.org/Documents/Issues/Business/LetterResponseToOECD.pdf and http://www.ohchr.org/Documents/Issues/Business/LetterOECD.pdf respectively.

B. The impact of the financial crisis

85. Since the onset of the global financial crisis, there has been a focus on the impact of the financial sector on the broader society, including its impacts on the enjoyment of human rights.[52]

86. The Working Group received information during the visit on how the activities of the financial sector leading up to and during the financial crisis impacted rights, in particular on adequate housing in the United States and on food security both within and outside the United States. Some stakeholders suggested that there was neither effective protection nor access to remedy for those impacted and pointed to an alleged failure of the regulators to prevent and mitigate human rights risks arising from reckless financial sector activities.

87. The Working Group is particularly concerned by information alleging a disproportionate impact of the crisis on the poor, on racial minorities and on women, particularly from minorities, and how predatory mortgage lending practices particularly targeted such groups and communities.[53] Such concerns echo those raised by the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, during her visit to the United States in 2009 (A/HRC/13/20/Add.4) and in her reports on the impact of the financial crisis on adequate housing (A/HRC/10/7), and those raised by the Committee on the Elimination of Racial Discrimination (CERD/C/USA/CO/60).

88. The Working Group notes and welcomes the efforts by the United States and individual state attorneys general to investigate various aspects of lending by financial institutions in the context of the subprime mortgage crisis and the settlements reached with banks and other financial institutions that provide partial relief to borrowers who were negatively impacted by their actions.[54] At the same time, the Working Group received allegations that relief was not reaching all those who had been affected and that in particular, minority households were the least likely to be receiving relief, despite being proportionately the worst affected.

C. Information and communications technology

89. The information and communications technology (ICT) sector is a significant driver of growth and productivity gains in other sectors of the United States economy. During its visit, the Working Group met separately with companies in the sector, civil society organizations and multi-stakeholder initiatives in relation to the corporate responsibility to respect human rights. Information and communications technology facilitates the sharing of ideas, permits the broadcasting of information and enables communication. Its platforms and software connect individuals, communities and societies both publicly and privately.

---

[52] The impact of the financial crisis on human rights has been examined in detail by human rights bodies. See, for example, A/HRC/13/38.

[53] See, for example, the submission of the Centre on Housing Rights and Evictions to the universal periodic review of the United States, April 2010.

[54] This includes the national mortgage settlement relating to some of the claims and separate settlements reached with respect to other ongoing investigations.

How those technologies are used, or abused, has an impact on the rights to privacy, property and freedom of expression.[55]

90. The Working Group notes the concerns of stakeholders regarding surveillance by the Government of the United States. The responsibility of ICT companies to respect human rights under the Guiding Principles coexists with the need to comply with legal requirements for national security and countering terrorism if that entails providing access to private data.[56] The Working Group notes that United States ICT companies operating abroad sometimes face requirements from Governments concerning surveillance, the removal or censorship of content, restrictions of network service or coverage and other demands that may not immediately be reconcilable with the duty of States to protect human rights, as prescribed by the Guiding Principles.[57]

91. The Working Group notes efforts by some United States ICT companies to ensure that they are able to disclose information on data requests with greater transparency, as well as efforts through multi-stakeholder initiatives, such as the Global Network Initiative, to establish common principles for managing government requests related to privacy and freedom of expression. The Working Group also welcomes efforts by the Global Network Initiative to review the alignment of its policies with the Guiding Principles and its stated intent to develop a mechanism for stakeholders wishing to raise concerns over the compliance of members of the Initiative with its principles. The Working Group further notes industry initiatives, such as the telecommunications industry dialogue on freedom of expression and privacy, and encourages the participation of United States telecommunications companies in this initiative.[58]

92. Other relevant human rights risks in the ICT sector relate to, inter alia, working conditions in manufacturing supply chains, impacts associated with alleged use of "conflict minerals" and impacts associated with the harmful effects of improperly handled electronic waste. The Working Group in this context acknowledges industry-led initiatives, such as the Electronic Industry Citizenship Coalition, and recommends that the Coalition ensure that its code of conduct aligns with the Guiding Principles.

93. The Working Group cautions that there are significant risks associated with United States companies selling surveillance technology to States if these are then used to violate human rights. The Working Group advises that where conflicts regarding access to data or application of technology arise, close consideration is given to the expected roles and responsibilities of respective State and business actors, as prescribed by the three pillars of the Guiding Principles.

---

[55] The Working Group also refers to the report and recommendations on this subject of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/23/40).

[56] The Working Group visit to the United States took place prior to the publication in the media of allegations regarding surveillance activities, which started in June 2013.

[57] See guiding principle 23.

[58] See the guiding principles of the dialogue available from www.telenor.com/wp-content/uploads/2013/03/Telecoms-Industry-Dialogue-Principles-Version-1.pdf.

VIII. Conclusions and recommendations

A. Conclusions

94. **The Working Group welcomes the political leadership of the Government of the United States in supporting and committing to the implementation of the Guiding Principles. The Working Group found that many government agencies are making notable efforts to address specific business-related human rights challenges.**

95. **The Working Group also welcomes the efforts of the Government to set out its approach to business and human rights in the document released on the final day of its visit. However, given the gaps revealed in that document, as well as during testimonies and information provided to it in meetings with stakeholders during the visit, the Working Group considers it imperative that the Government embark upon a process aimed at developing a comprehensive national action plan for the implementation of the Guiding Principles.**

96. **The Working Group found that significant gaps remain in regulation, oversight and enforcement in some areas where business activities might adversely impact human rights. This was the case notably but not exclusively in the area of labour, such as the exclusion of workers in agriculture from protections afforded in other sectors through legislation such as the National Labor Relations Act.**

97. **The Working Group was encouraged by the vibrant dialogue and multi-stakeholder initiatives on a range of thematic and sectoral issues that it encountered and commends all stakeholders, including the Government, that participate in robust, constructive initiatives to ensure that rights are protected and respected in a business context. Nonetheless, the Working Group notes that while many such initiatives can play an important role in advancing respect for human rights, notably when they include strong and legitimate grievance and accountability mechanisms, the Government ultimately has the duty to protect against abuses.**

98. **The Working Group notes that remedy for business related human rights abuse can come in many different forms: judicial, non-judicial or at the operational level. While remedy mechanisms are provided in selected policy areas and while the United States courts are still generally more accessible to victims than is the case in many other jurisdictions,[59] the Working Group is of the view that a comprehensive study of different remedial mechanisms and their effectiveness needs to be undertaken to allow for a more comprehensive implementation of the third pillar of the Guiding Principles.**

99. **During the visit, the Working Group was encouraged by several encounters with business representatives fully committed to ensuring that they operate with respect for human rights. However, it was struck by the hostility, particularly with respect to labour rights, of many business representatives to the notion that business enterprises have distinct responsibilities with regard to human rights. The Working Group would like to reiterate that alongside the duty of the State to protect human rights, the Guiding Principles stipulate that companies should respect all internationally recognized human rights, as that term is defined in the Guiding Principles. The Guiding Principles also reaffirm the expectation that business complies with national law, but where the regulatory framework is either absent,**

[59] http://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticeLawRemedies.pdf.

insufficient or not enforced, business cannot assume that legal compliance alone is commensurate with meeting their responsibility to respect human rights.

100. The Working Group recognizes that business may be less familiar with human rights issues than Governments and civil society and that it may face challenges in integrating and interpreting human rights within corporate systems and decision-making processes. It urges business associations and networks to demystify human rights by raising awareness among their members.

101. The Working Group was encouraged by the vibrant civil society in the United States engaging on business and human rights from different angles and perspectives and using the Guiding Principles in their advocacy and policy development work. Constructive engagement by civil society, including trade unions, is essential to moving the agenda forward.

B. Recommendations

102. The Working Group would like to make the following more specific recommendations:

(a) The Working Group recommends that the Government commence the process of developing a national action plan for the implementation of the Guiding Principles that takes account of both the domestic and foreign dimensions of its duty to protect human rights;

(b) The Working Group recommends that the Government ensure that reports submitted under transparency and reporting schemes include information on how the submitting companies have addressed human rights risks. For legitimacy and effectiveness, it is also recommended that there are meaningful consequences for companies which do not fulfil reporting obligations;

(c) The Working Group welcomes the support of the Government for the International Code of Conduct for Private Security Service Providers and the fact that the Department of State has signalled its intent to require membership for entities wishing to bid for government contracts. The Working Group recommends that it become government policy across the board to require membership of the code of conduct in relevant contracts;

(d) The Working Group encourages the Government to ensure that sufficient resources are allocated to the national contact point for the OECD Guidelines and consider strengthening the specific instance process, including the incorporation of best practices from the specific instances procedures of national contact points of other countries as regards transparency and making findings of fact;

(e) The Working Group recommends that the Tom Lantos Human Rights Commission consider holding a hearing on how the Government could further integrate the Guiding Principles into the activities of its various agencies;

(f) The Working Group calls on the Government to ensure that all workers are able to exercise their rights in accordance with the ILO Declaration on Fundamental Principles and Rights at Work, with no undue exclusions, including, but not limited to, agricultural workers, supervisors and public employees;

(g) The Working Group recommends that the Government take steps to strengthen the relevant domestic legal environment, especially in relation to labour rights. It encourages the Government to take steps to ratify the core ILO conventions

and implement the recommendations of the ILO review bodies and the human rights treaty bodies;

(h) The Working Group encourages the United States to continue and expand its efforts to fight trafficking in persons, in collaboration with business and civil society organizations, and to share its experience of coordinated action with other countries;

(i) The Working Group recommends that the Government and companies in the agricultural sector address concerns expressed by international bodies with regard to child labour in the United States agricultural sector as a matter of priority, so as to ensure that the rights of children are effectively protected in the context of agricultural business activities;

(j) The Working Group welcomes the proliferation of multi-stakeholder initiatives to address business and human rights challenges, but recommends that all such initiatives review the implications of the Guiding Principles and take appropriate steps to ensure that their policies, procedures and practices are aligned with the Principles, including as regards access to remedy;

(k) The Working Group recommends that the Government undertake a comprehensive review of the mechanisms that are in place to provide effective remedy for cases involving business-related human rights abuse;

(l) In the context of high-impact business activities, such as surface mining, the Working Group urges the responsible authorities to investigate and address allegations of serious human rights impacts, including through timely and comprehensive consultations with affected communities. It also recommends that coal companies ensure that they operate with respect for human rights, as proposed under the Guiding Principles;

(m) In the context of implementation of the Guiding Principles at the county and municipal levels, the Working Group encourages counties and municipalities to consider implementing and sharing learning on relevant initiatives, especially on policy coherence across departments that engage with contractors and other businesses;

(n) The Working Group encourages the United States authorities to address potential impacts on the rights of indigenous peoples in both awareness-raising with business enterprises and regulatory and policy programmes, to encourage and/or require companies to respect their rights throughout their global operations;

(o) The Working Group encourages the financial sector, which is key to enabling the environment for business, to ensure that it meets its own responsibilities under the Guiding Principles and to use the Principles to foster greater respect, responsibility and accountability for human rights amongst their business clients and customers, including in the context of providing services to high-impact industries such as surface mining;

(p) The Working Group urges business associations and networks to demystify human rights by raising awareness of the Guiding Principles among their members;

(q) The Working Group encourages civil society organizations to continue their constructive engagement on business and human rights and welcomes the use of the Guiding Principles as a tool for advocacy and engagement.

103. **The Working Group looks forward to receiving information on the implementation of these measures, and encourages the Government to share and build on lessons learned from their initial implementation.**